



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

April 11, 2007

CERTIFIED MAIL - RETURN RECEIPT

Joseph H. Cahill, Esq.
Associate Attorney
Bureau of Professional Medical Conduct
NYS Department of Health
Corning Tower -25th Fl.
Empire State Plaza
Albany, NY 12237

Asha Mysore, M.D.
134 Shotgun Lane
Elgin, Texas 78621

RE: **Corrected Determination and Order**
Asha Mysore, M.D.

Dear Mr. Cahill and Dr. Mysore:

Please note that there is a "typo" in the Determination and Order issued on April 6, 2007 for the above. You are referred to the paragraph entitled "Determination as to Penalty" on page 6, line 11. The first full sentence should be corrected to read as follows:

"They also note that her blood alcohol was reported as .316 when she was admitted to St. Elizabeth's but she stated that she only had a few drinks."

Sincerely,

Christine C. Traskos
Administrative Law Judge



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

April 6, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Asha Mysore, M.D.
134 Shotgun Lane
Elgin, Texas 78621

Joseph H. Cahill, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237-0032

RE: In the Matter of Asha Mysore, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-70) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,


Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

**IN THE MATTER
OF
ASHA MYSORE, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #07-70

GERALD BRODY, M.D., Chairperson, JAMES T. ADAMS, M.D. and SISTER MARY THERESA MURPHY, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. CHRISTINE C. TRASKOS, ESQ., served as Administrative Officer for the Hearing Committee. The Department of Health appeared by DONALD P. BERENS, Jr., General Counsel, JOSEPH H. CAHILL, ESQ., Assistant Counsel, of Counsel. The Respondent did not appear in person and was not represented by counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged four (4) specifications of professional misconduct including allegations of negligence, incompetence, habitual use/abuse of drugs, alcohol and inadequate records. The charges are more specifically set forth in the Statement of Charges dated February 2, 2007, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order.

PROCEDURAL HISTORY

Notice of Hearing Date:	February 2, 2007
Pre-Hearing Conference	February 20, 2007
Hearing Date:	February 26, 2005
Deliberation Date:	February 26, 2007
Transcript Received:	March 12, 2007

On February 20, 2007, the Administrative Law Judge (ALJ) held a pre-hearing conference. Both parties had been notified in writing about the date and time of the conference. (.ALJ Ex. #1) Respondent did not appear at the pre-hearing conference and several attempts to contact her by telephone prior to the start of the conference were unsuccessful. No Counsel appeared on her behalf. At the pre-hearing, the Notice of Hearing and Affidavit of Service were accepted into evidence and jurisdiction was obtained over Respondent. (Transcript of Pre-hearing conference, pp. 4-5)

On February 26, 2007, the date of the hearing, Respondent did not personally appear nor was she represented by counsel. At the onset of the hearing, the Prosecutor for Petitioner-Department reiterated on the record his history of contact both written and verbal with the Respondent. The Prosecutor stated that although he had spoken with Respondent on several

occasions, she has not returned his calls ever since the Statement of Charges were served upon her approximately three weeks prior to the start of the hearing. (T. 16-19) The ALJ also noted that Respondent failed to respond to her correspondence or Pre-Hearing Order. (T.14)

Respondent received ample notice of her statutory requirement to submit an Answer in the Notice of Hearing (Petitioner's Ex. 1, p. 2) which states:

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge and allegation not so answered shall be deemed admitted. (Underline in original)

Public Health Law§ 230(10)(c) clearly indicates that the failure to file a written answer will result in the charges and allegations being deemed admitted. Due to Respondent's failure to submit a written answer, the ALJ, upon motion by the Petitioner, ruled that the factual allegations and charges of misconduct contained in the Statement of Charges (Pet. Ex. 1) were deemed admitted by Respondent. (T. 20) See also Corsello v. New York State Department of Health, 300 A.D. 2d 849,752 N.Y. S. 2d 156 (App. Div. 3rd Dep't. 12/19/2002).

FINDINGS OF FACT

1. Respondent was licensed to practice medicine in New York State on or about January 6, 1994 by issuance of license number 194694 by the New York State Education Department. (Ex.1)
2. Respondent provided medial care and treatment to Patient A on November 14, 2002 at the St. Elizabeth Medical Center, Emergency Department located a 2209 Genesee Street,

Utica, New York (hereinafter "St. Elizabeth's"). Patient A was a 22 year old male brought to the Emergency Department after a high speed motor vehicle accident in which he was not wearing a seat belt and in which alcohol was involved.

3. Respondent failed to order cervical spine diagnostic imaging studies, including x-rays, before clearing the patient's cervical spine.
4. Respondent failed to adequately re-assess the patient prior to discharge.
5. Respondent provided medical care and treatment to Patient B on September 20, 2002 at St. Elizabeth's Emergency Department. Patient B was 38 year old female who presented with a complaint of a fall injuring her face and head, pain swelling, bruising and vomiting. A CT scan of the head indicated the possibility of an ischemic event.
6. Respondent failed to perform and/or record an adequate neurological examination.
7. Respondent failed to obtain and/or record a complete history concerning the cause of injury.
8. Respondent failed to note whether the patient had ceased vomiting and was able to tolerate food and water prior to discharge.
9. Respondent provided medical care and treatment to Patient C on November 29, 2002 at St. Elizabeth's Emergency Department. Patient C was a 70 year old male who presented to the Emergency Department with shortness of breath, a recent history of wheezing and a productive cough. The patient had a history of coronary artery disease, status post a myocardial infarction in 1996. He also had diabetes mellitus, Type II, congestive heart failure and an abdominal aortic aneurysm repair.

10. Respondent failed to adequately interpret the patient's EKG results.
11. Respondent, at various times between 1997 and 2005 habitually used and/or abused, either singly or in combination with each other, the following drugs and/or substances: Alcohol, Hydrocodone, Ambien, Restoril, Ativan, Phentermine and over the counter diet pills (Xederine and Metabolith).

CONCLUSIONS OF LAW

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings of Fact listed above, that **all of the Factual Allegations** contained in the February 2, 2007 Statement of Charges are **SUSTAINED**.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee unanimously concludes that **all of the Specifications of Misconduct (First, Second, Third and Fourth)** contained in the Statement of Charges are **SUSTAINED**.

The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

DISCUSSION

Respondent is charged with four (4) specifications of alleged professional misconduct within the meaning of §6530 of the Education Law. The Hearing Committee determined that all of the allegations and all of the charges contained in the Statement of Charges were established by a preponderance of the evidence.

Respondent did not appear at the hearing. The record shows that the Respondent had been properly served with the Notice of Hearing and Statement of Charges. The ALJ ruled that

the requirements of the Public Health Law for service of process had been met and she directed the Committee to proceed with the hearing despite the absence of the Respondent. The ALJ also ruled that the requirements of the Public Health Law required Respondent to file a written answer to the Statement of Charges and that the failure to do so resulted in the allegations and specifications of misconduct being deemed admitted by Respondent under the applicable statute [(PHL § 230(10)(c)] As a result, the Hearing Committee sustains the First, Second, Third and Fourth Specifications of professional misconduct against Respondent.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interests of justice.

The Hearing Committee believes it to be very unfortunate that Respondent did not appear at the hearing. They are unaware of her current work status, but the record indicates that she has not been practicing since 2005. (Ex. 3, p.9) The Hearing Committee is mainly concerned with Respondent's behavior. They find the nature of the answers she provided during her evaluations as well as her correspondence with the Department to be disturbing. They also note that her blood alcohol was reported as 3.16 when she was admitted to St. Elizabeth's but she stated that she only had a few drinks. (Ex. 7, last page) The Hearing Committee believes that a

physician, especially one practicing in the emergency room, needs to depend on his or her judgment. The Hearing Committee believes that Respondent's pattern of thought disorder and pressured speech, as well as the fact that she may be under the influence of alcohol and drugs, do not make her safe to practice medicine in this State. Under the totality of the circumstances, the Hearing Committee concludes that revocation is the appropriate penalty in this instance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

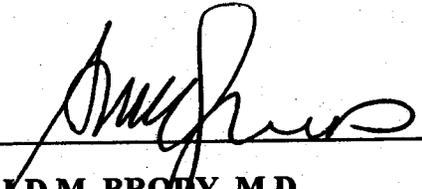
1. The First, Second, Third and Fourth of the Specifications of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED;** and

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED;**

3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: , New York

4/5 / 2007



GERALD M. BRODY, M.D.

(Chairperson)

JAMES T. ADAMS, M.D.

SISTER MARY THERESA MURPHY

TO: Joseph H. Cahill, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Bldg. Rm 2509
Albany, NY 12237-0032

Asha Mysore, M.D.
134 Shotgun Lane
Elgin, Texas 78621

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

Pet #1
in ev. 2/20/07
ccf

IN THE MATTER
OF
ASHA MYSORE, M.D.

NOTICE
OF
HEARING

TO: Asha Mysore, M.D.
134 Shotgun Lane
Elgin, Texas 78621

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on February 26, 2007, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A

DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: Albany, New York
February 2, 2007


Peter D. Van Buren
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Joseph Cahill, Associate Counsel
Bureau of Professional Medical Conduct
(518) 473-4282

IN THE MATTER
OF
ASHA MYSORE, M.D.

STATEMENT
OF
CHARGES

ASHA MYSORE, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 6, 1994, by the issuance of license number 194694 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care and treatment to Patient A (Patients are identified in the Appendix) on November 14, 2002 at the St. Elizabeth Medical Center, Emergency Department located at 2209 Genesee Street, Utica, New York (hereafter "St. Elizabeth's). Patient A was a 22 year old male brought to the Emergency Department after a high speed motor vehicle accident in which he was not wearing a seat belt and in which alcohol was involved. Respondent's care and treatment of Patient A failed to meet accepted standards of care in the following respects:
1. Respondent failed to order cervical spine diagnostic imaging studies, including x-rays, before clearing the patient's cervical spine.
 2. Respondent failed to adequately reassess the patient prior to discharge.
- B. Respondent provided medical care and treatment to Patient B on September 20, 2002 at St. Elizabeth's Emergency Department. Patient B was a 38 year old female who presented with a complaint of a fall injuring her face and head, pain, swelling, bruising and vomiting. A CT scan of the head indicated the possibility of an ischemic event. Respondent's care and treatment of

Patient B failed to meet accepted standards in the following respects:

1. Respondent failed to perform and/or record an adequate neurological examination.
2. Respondent failed to obtain and/or record a complete history concerning the cause of injury.
3. Respondent failed to note whether the patient had ceasing vomiting and was able to tolerate food and water prior to discharge.
4. Respondent failed to adequately evaluate and/or document the difference in the patient's pupil size and the sluggish pupil response.

C. Respondent provided medical care and treatment to Patient C on November 29, 2002 at St. Elizabeth's Emergency Department. Patient C was a 70 year old male who presented to the Emergency Department with shortness of breath, a recent history of wheezing and a productive cough. The patient had a history of coronary artery disease, status post a myocardial infarction in 1996. He also had diabetes mellitus, Type II, congestive heart failure and an abdominal aortic aneurysm repair. Respondent's care and treatment failed to meet accepted standards of care in the following respects:

1. Respondent failed to adequately interpret the patient's EKG results.

D. Respondent, at various times between 1997 and 2005 habitually used and/or abused, either singly or in combination with each other, the following drugs and/or substances:

1. Alcohol
2. Hydrocodone
3. Ambien
4. Restoril

5. Ativan
6. Phentermine
7. Over the counter diet pills, (Xederine and Metabolith)

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one occasion, in violation of N.Y. Educ. Law § 6530(3) in that Petitioner charges two or more of the following:

1. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing incompetence on more than one occasion in violation of N.Y. Educ. Law § 6530(5) in that Petitioner charges two or more of the following:

2. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1.

THIRD SPECIFICATION

HABITUAL USE/ABUSE OF DRUGS, ALCOHOL

Respondent is charged with being a habitual abuser of alcohol, or being a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, in violation of New York Education Law §6530(8), in that Petitioner charges:

3. The facts in paragraph D.

FOURTH SPECIFICATION

Respondent is charged with failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in violation of N.Y. Educ. Law §6530(32), in that Petitioner charges:

4. The facts in paragraphs b and B.1, B and B.2, B and B.3, B and B.4.

DATED: February 2, 2007


Peter D. Van Buren
Deputy Counsel
Bureau of Professional Medical Conduct